

the
djabugay
people's
native title determination
December 2004

WHAT IT MEANS AND HOW IT WILL WORK

Freecall: 1800 640 501

Website: www.nntt.gov.au

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NATIONAL NATIVE TITLE TRIBUNAL

Introduction

This brochure is designed to help everyone understand what the Djabugay People's native title determination and the associated indigenous land use agreement (ILUA) mean. It also includes a map showing the determination area and the areas not covered by the determination. The Djabugay People's consent determination that native title exists in the Barron Gorge National Park is the first to be made over a national park in Australia without litigation. The park is situated near Cairns in Far North Queensland and covers about 2,800 hectares.

The Djabugay People made their application for a determination of native title on 26 May 1994. Their main objective was to have their native title rights and interests in the Barron Gorge National Park recognised.

The National Native Title Tribunal (the Tribunal) mediated the claim from September 1994. Since late 1998, when the *Native Title Act 1993 (Cth)* was amended, the Federal Court has been responsible for managing all native title applications and making determinations of native title and has supervised the mediation of this claim.

The determination will come into effect once an indigenous land use agreement (ILUA), between the Djabugay People, the State of Queensland and the Djabugay Native Title Aboriginal Corporation has been registered on the Register of Indigenous Land Use Agreements held by the Tribunal. It will be known as the Barron Gorge National Park Indigenous Land Use Agreement (Area Agreement).

It is important to note that the recognition of native title over the Barron Gorge National Park does not mean other people cannot access or use it.

The interests of the general public and others have been recognised and protected in the determination. If the native title rights and interests

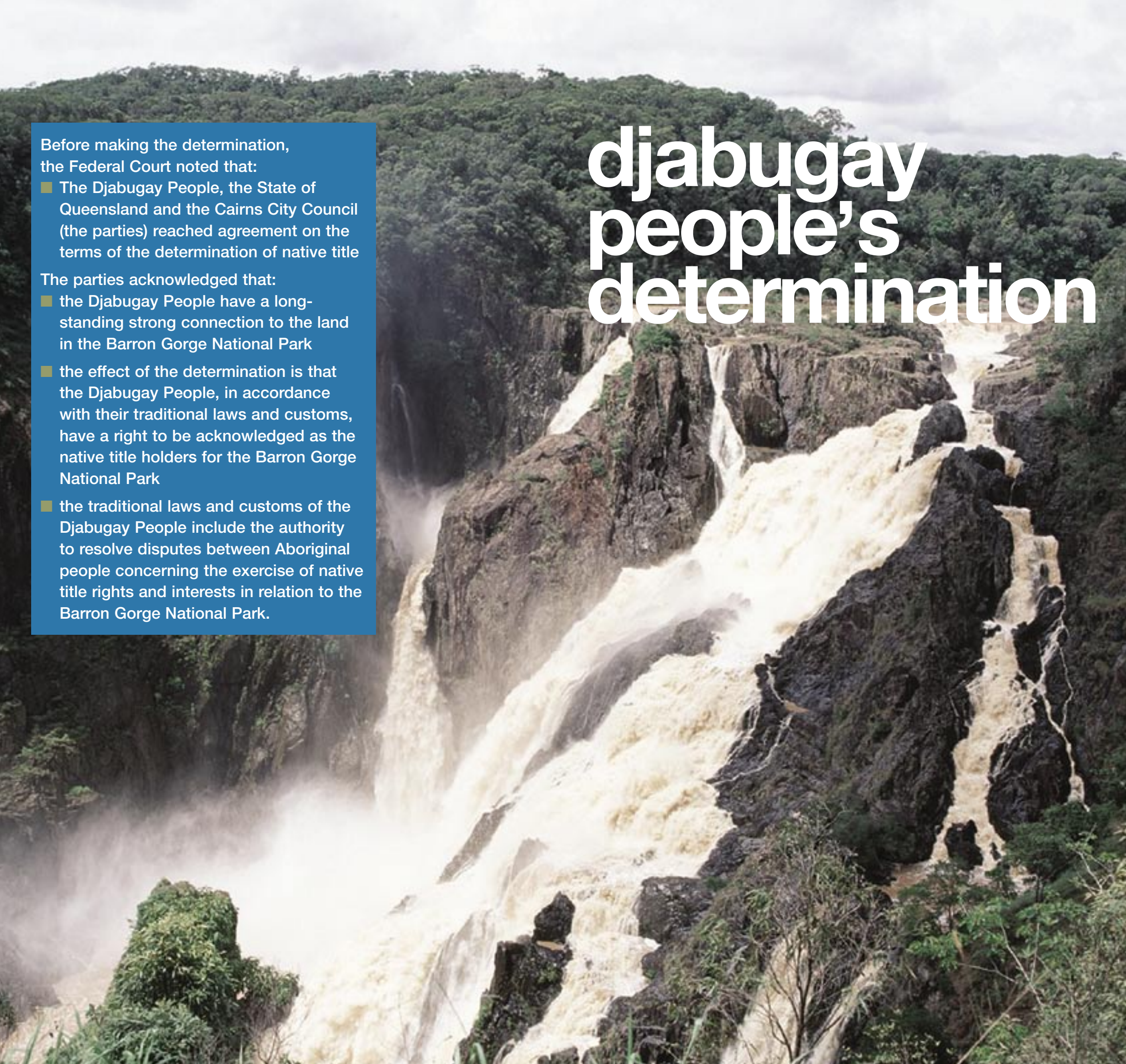
are at odds with other interests, then the native title rights and interests must give way. That is, the other interests have priority.

NOTE:

The Barron Gorge National Park determination area includes most of Barron Gorge National Park. For the sake of convenience only, the term 'Barron Gorge National Park' has been used when it would be more accurate to state 'most of the Barron Gorge National Park'. The precise area where native title has been recognised is shown on the map of the determination area printed in this brochure.

Definitions

Some of the words and phrases used in the determination have particular meanings. Words and phrases defined in the *Native Title Act 1993 (Cth)* have the meaning given to them in the Act. Others are defined in the determination.



djabugay people's determination

Before making the determination, the Federal Court noted that:

- The Djabugay People, the State of Queensland and the Cairns City Council (the parties) reached agreement on the terms of the determination of native title

The parties acknowledged that:

- the Djabugay People have a long-standing strong connection to the land in the Barron Gorge National Park
- the effect of the determination is that the Djabugay People, in accordance with their traditional laws and customs, have a right to be acknowledged as the native title holders for the Barron Gorge National Park
- the traditional laws and customs of the Djabugay People include the authority to resolve disputes between Aboriginal people concerning the exercise of native title rights and interests in relation to the Barron Gorge National Park.

What does the determination mean?

A determination is a decision by the Federal Court of Australia that native title does or does not exist over a particular area of land or waters. Where native title does exist, the determination states who holds the native title and what those rights are, as well as the rights of others. When the parties have reached agreement after mediation, and the Federal Court endorses the agreement, it is known as a consent determination.

This consent determination recognises that, under their traditional laws and customs, the Djabugay People have native title rights and interests in Barron Gorge National Park.

This is recognition that the Djabugay People's native title has always been here — *it is not a grant from the government or the court.*

The determination sets out the particular native title rights and interests that are recognised, along with the rights and interests held by others over the park.

The agreement relating to this determination

The determination is dependent on the registration of the ILUA on the Register of Indigenous Land Use Agreements. The ILUA is a voluntary agreement made between the Djabugay People, the State of Queensland and the Djabugay Native Title Aboriginal Corporation.

The ILUA is binding on all native title holders of the area covered by the agreement, whether or not they are parties to the agreement.

The parties to this ILUA have reached an agreement about the exercise of native title rights and interests in the Barron Gorge National Park to ensure good management of the park. The area to which the ILUA applies is the same as for the determination.

The ILUA says that Djabugay People will:

- carry out any hunting in the Barron Gorge National Park in a manner consistent with the public enjoyment of the park and with the management principles of National Parks
- not use firearms in the Barron Gorge National Park, except as expressly authorised by Queensland Parks and Wildlife Service
- not take or interfere with rare, endangered or vulnerable species in the Barron Gorge National Park
- not, without the further agreement of Queensland Parks and Wildlife Service, camp in the Barron Gorge National Park for periods of longer than four weeks at a time.

Are the native title rights exclusive?

The determination recognises that the native title rights and interests of the Djabugay People are not exclusive. This means that the Djabugay People do not have the right to control who can access or use Barron Gorge National Park and the park will continue to be shared by all those with an interest in the area, including members of the public.

What are the native title rights and interests?

The native title rights and interests of the Djabugay People are rights to:

- be physically present on the Barron Gorge National Park
- camp on the Barron Gorge National Park (note: camping does not include the right to permanently reside or build permanent structures or fixtures)
- hunt, fish and gather on, and take the natural resources of, the Barron Gorge National Park for the purpose of satisfying their personal, domestic, social, cultural, religious, spiritual, ceremonial and communal needs for non-commercial purposes
- maintain and protect by lawful means places within the Barron Gorge National Park of importance to the Djabugay People
- perform social, cultural, religious, spiritual or ceremonial activities in the Barron Gorge National Park and invite others to participate in these activities, and
- make decisions about the use and enjoyment of the Barron Gorge National Park by Aboriginal people who are governed by the traditional laws acknowledged and traditional customs observed by the Djabugay People.

Throughout the negotiation of this native title claim, Djabugay People have continually expressed their willingness to only exercise their rights in a manner compatible with the continued sustainable management of Barron Gorge National Park.

The Environmental Protection Agency is currently working with the Djabugay People to develop a management plan for the park. Further, the ILUA states negotiations will continue regarding long term agreements about land management, employment, cultural heritage, protection and any other matters.

What other interests are protected?

The other interests in Barron Gorge National Park are listed in the determination.

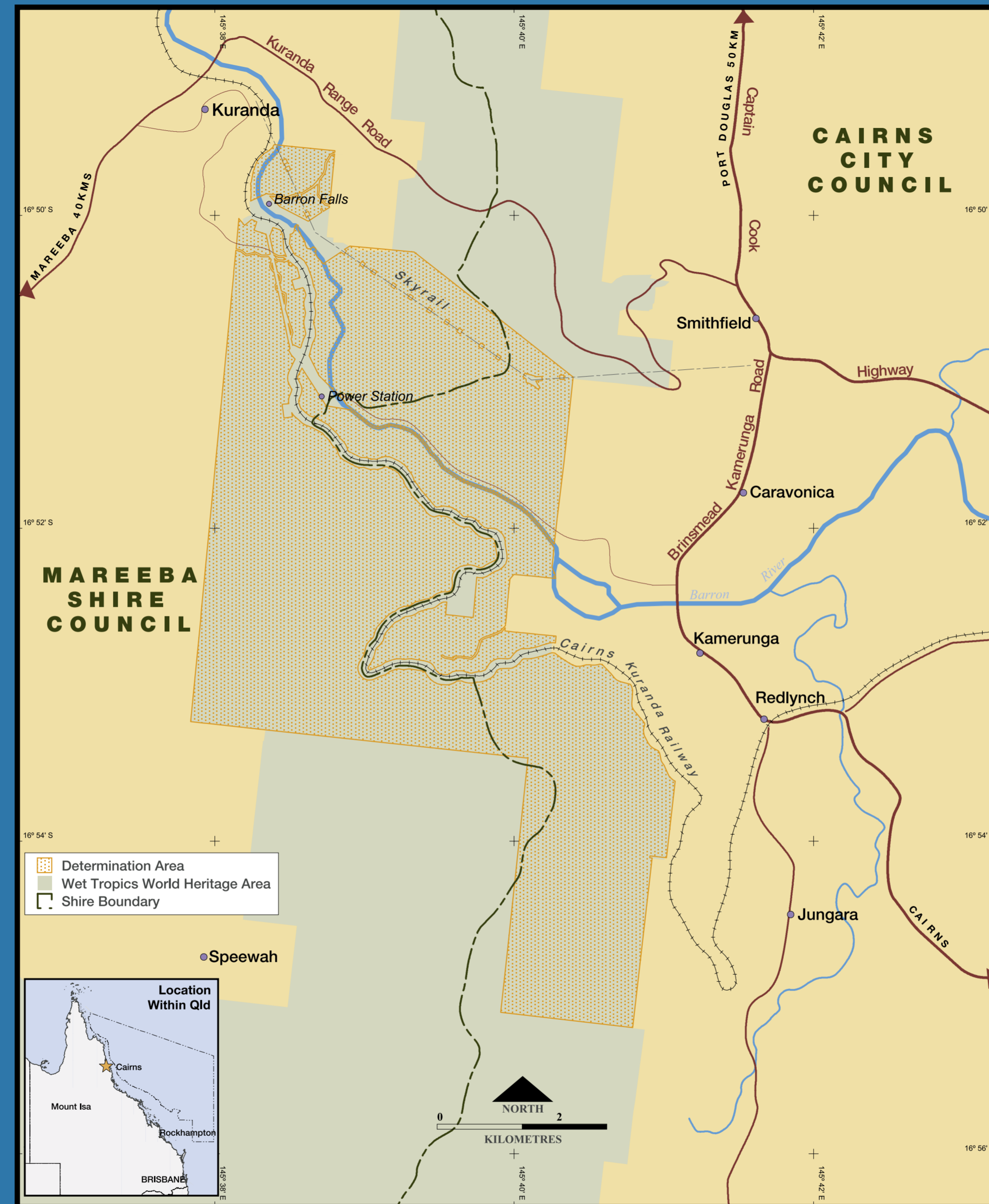
They are the interests of:

- the State of Queensland
- the Wet Tropics Management Authority
- Skyrail Pty Ltd
- the Cairns City Council and Mareeba Shire Council
- Powerlink, Ergon Energy Corporation, Stanwell Corporation, and
- the public who can access the Barron Gorge National Park for recreation purposes.

These 'other interests' can be exercised even though the Djabugay People have native title. They prevail over the native title rights and interests, and if the native title rights and interests are at odds with other interests, then the native title rights and interests must give way.

In addition, the laws of the state and the laws of the Commonwealth of Australia apply to the Djabugay People — just like everyone else in the community.

Map of the determination area



What areas are not covered by the determination?

Some areas within the Barron Gorge National Park are not covered by the determination and therefore no native title rights and interests are recognised over those areas. The areas include:

- areas that were, in the past, covered by a freehold grant or an exclusive lease
- leases and cable way for the Skyrail
- areas where there are public works, such as the boardwalk that links the Barron Gorge train station with the car park off Barron Falls Road, the Cairns Kuranda railway corridor and other works associated with the Barron Gorge Hydro-Electric Power Station.

The determination also states that there are no native title rights to minerals or petroleum in the Barron Gorge National Park.

How will things change for the Djabugay People?

This is the first time that Djabugay People have had their connection to their traditional lands legally recognised. However, not all of their traditional laws and customs have been recognised.

Djabugay People say that, under their laws and customs, they would have the right to make decisions about who is allowed to go on to their lands, and what people can do on that land. But they understand that not all of their laws and customs can be recognised. For example, members of the public may enter and use the Barron Gorge National Park without getting permission from Djabugay People — Djabugay People respect this right.

Djabugay People want to be more involved in managing their traditional lands, including the Barron Gorge National Park. They envisage the determination of their native title and the associated ILUA will continue to improve the cooperative involvement of the Djabugay People in the management of the Barron Gorge National Park, for the benefit of the park's natural and cultural preservation and the wider community.

Prescribed Body Corporate

The Djabugay Native Title Aboriginal Corporation will be determined to be the native title corporation that performs some functions on behalf of the Djabugay People. It is expected to work closely with the Djabugay Tribal Aboriginal Corporation, which is the Djabugay body that looks after most Djabugay business.

Further information

Copy of judgment and determination

You can find a copy of the judgment and determination on the Federal Court of Australia's website: www.fedcourt.gov.au under the sub-heading 'Judgments'.

Or contact:

Librarian
Federal Court of Australia
Level 8, Commonwealth Law Courts Building
119 North Quay, Brisbane Qld 4000
Tel: (07) 3248 1100

Copies of determination and ILUA Register Extract

Cairns office
National Native Title Tribunal
PO Box 9973, Cairns Qld 4870
Tel: (07) 4048 1500 or freecall 1800 640 501

The Registrar of the National Native Title Tribunal maintains information about the ILUA once it has been placed on the register including area description, the names of the parties and their contact addresses and the period during which it will operate.

Prescribed Body Corporate

Djabugay People
c/- North Queensland Land Council
PO Box 679N, Cairns North Qld 4870
Tel: (07) 4031 4779

The representative body for this determination is North Queensland Land Council, whose details are above.

Management of Barron Gorge National Park

Manager, Park Services
Environmental Protection Agency/Queensland Parks and Wildlife Service
PO Box 2066, Cairns Qld 4870
Tel: (07) 4046 6704